

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOHN PETERSON.

Case No.2:22-CV-1509 JCM (NJK)

Plaintiff(s),

ORDER

V.

**UNITED FINANCIAL CASUALTY
COMPANY,**

Defendant(s).

Presently before the court is defendant United Financial Casualty Company's (UFCC) motion for summary judgment. (ECF No. 40). Plaintiff John Peterson filed a response (ECF No. 45), to which UFCC replied (ECF No. 49). For the reasons stated below, the court grants, in part, and denies, in part, UFCC's motion for summary judgment.

I. Background

This action arises out of a car accident involving Peterson and nonparty Pedro Perez-Papias. (ECF No. 40). Perez-Papias was listed as an insured driver on the underlying policy belonging to Guadalupe Zazueta. (*Id.*). Peterson litigated the personal injury action in state court and was granted default judgment against Perez-Papias. (*Id.*). Peterson is now pursuing these claims as the assignee of Perez-Papias's remaining claims against UFCC. (*Id.*).

Peterson asserts UFCC is liable to Perez-Papias under Zazueta's policy. (ECF No. 34). Zazueta paid \$656.40 to UFCC as her initial payment on the policy in August 2017. (ECF No. 40, Exhibit C). The parties dispute how long the contract remained valid without any further payments. (*Id.*).

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1 UFCC contends that the initial payment constituted a down payment and that Zazueta
 2 agreed to a payment plan in which she would make nine additional payments over a 12-month
 3 period. (ECF No. 49). UFCC asserts that Zazueta owed payments in September and October 2017
 4 that she did not pay. (*Id.*).

5 Peterson argues that the \$656.40 initial payment provided Zazueta with 75 days of
 6 coverage, and that she did not owe any further payments until November 6, 2017. (ECF No. 45).
 7 Peterson alleges the parties never agreed to a set payment schedule. (*Id.*). Neither party disputes
 8 that UFCC sent Zazueta payment bills in September and October, and that Zazueta did not pay
 9 either of them. (ECF Nos. 40; 45).

10 UFCC attempted to cancel Zazueta's policy for nonpayment. (ECF No. 40). On October
 11 30, 2017, UFCC sent Zazueta a cancellation notice, effective November 10, 2017. (*Id.*). The
 12 underlying automobile accident occurred on November 12, 2017—two days after the purported
 13 cancellation. (*Id.*).

14 Peterson asserts five claims, alleging UFCC improperly denied coverage to Perez-Papias
 15 because the policy was still valid at the time of the collision. UFCC moves for summary judgment
 16 on all five claims.

17 **II. Legal Standard**

18 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
 19 depositions, answers to interrogatories, and admissions on file, together with the affidavits (if any),
 20 show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment
 21 as a matter of law." Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is "to isolate
 22 and dispose of factually unsupported claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24
 23 (1986).

24 In judging evidence at the summary judgment stage, the court does not make credibility
 25 determinations or weigh conflicting evidence. Rather, it draws all inferences in the light most
 26 favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809
 27 F.2d 626, 630–31 (9th Cir.1987). The court can consider all evidence that would be admissible at
 28 ...

1 trial in resolving a motion for summary judgment. *Orr v. Bank of Am.*, 285 F.3d 764, 773 (9th
2 Cir.2002).

3 When the non-moving party bears the burden of proof at trial, the moving party can meet
4 its burden on summary judgment in two ways: (1) by presenting evidence to negate an essential
5 element of the non-moving party's case; or (2) by demonstrating that the non-moving party failed
6 to make a showing sufficient to establish an element essential to that party's case on which that
7 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving
8 party fails to meet his initial burden, summary judgment must be denied, and the court need not
9 consider the non-moving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
10 60 (1970).

11 If the moving party satisfies his initial burden, the burden then shifts to the opposing party
12 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
13 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
14 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
15 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
16 versions of the truth at trial.” *T.W. Elec. Serv., Inc.*, 809 F.2d at 630.

17 However, the nonmoving party cannot avoid summary judgment by relying solely on
18 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,
19 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
20 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
21 for trial. *See Celotex*, 477 U.S. at 324. If the nonmoving party's evidence is merely colorable or
22 is not significantly probative, summary judgment may be granted. *Anderson v. Liberty Lobby*,
23 *Inc.*, 477 U.S. 242, 249–50 (1986).

24 III. Discussion

25 Peterson's first amended complaint alleges five causes of action: (1) breach of contract, (2)
26 fraudulent and intentional misrepresentation, (3) breach of the contractual covenant of good faith
27 and fair dealing, (4) breach of the tortious covenant of good faith and fair dealing, and (5) violation
28 of the Nevada Unfair Claims Practices Act. (ECF No. 34). UFCC moves for summary judgment

1 on all five claims. (ECF No. 40). The court will consider each claim consecutively.

2 A. Breach of Contract

3 Nevada treats insurance policies like other contracts, and thus, legal principles applicable
 4 to contracts are generally applicable to insurance policies. *Century Sur. Co. v. Andrew*, 134 Nev.
 5 819, 432 P.3d 180, 183 (2018) (citations omitted). Nevada law requires a breach of contract
 6 claimant show (1) the existence of a valid contract, (2) performance by the plaintiff, (3) a breach
 7 by the defendant, and (4) damages resulting from the breach. *Walker v. State Farm Mutual*
 8 *Automobile Insurance Company*, 259 F.Supp.3d 1139, 1145 (D. Nev. 2017).

9 The parties do not dispute that they entered into a valid insurance contract in August 2017.
 10 UFCC contends that Zazueta owed payments in September and October 2017 and failed to pay
 11 them, so it canceled her policy prior to the collision in November 2017. Peterson argues that
 12 Zazueta's initial payment provided coverage until November, so she did not owe payments in
 13 September or October and her policy remained effective.

14 Summary judgment is not appropriate when the parties' intentions in an ambiguous
 15 contract are subject to equally plausible factual inferences. *Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848,
 16 857 (9th Cir. 1995). That is the case here.

17 The parties dispute Zazueta's payment obligations under the contract. The policy stated
 18 that UFCC can cancel Zazueta's policy if she fails to make premium payments when due. (ECF
 19 No. 40, Exhibit Q at 2). However, the policy omitted a payment schedule setting forth the exact
 20 dates on which payments were due. Such an omission creates ambiguity in the parties' obligations
 21 under the contract.

22 The court may look to all admissible evidence on the summary judgment record to support
 23 its finding. *Orr*, 285 F.3d at 773. Zazueta selected a ten-installment payment plan in her insurance
 24 application. (ECF No. 40, Exhibit B). Zazueta's total premium cost was \$3,182, split into ten
 25 payments of \$318.20. (*Id.*). Zazueta's initial \$636.40 payment is the amount of two installments,
 26 or twenty percent of the total contract price. (*Id.*).

27 Peterson deposed Susan Peternelj, UFCC employee, who estimated that Zazueta's initial
 28 payment provided her with about 75 days of equity. (ECF No. 40, Exhibit O at 48). Peterson also

1 retained insurance expert Scott Glogovac, who opined in his declaration that UFCC had “no valid
 2 factual basis for contending that premiums were ‘due’” in September and October. (ECF No. 45,
 3 Exhibit 13 at 3).

4 The court must draw all reasonable inferences favorably to Peterson under the summary
 5 judgment standard. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587
 6 (1986). Here, a reasonable factfinder could find UFCC’s omission of a clear payment schedule
 7 created unavoidable ambiguity when nine additional payments were owed in a twelve month
 8 period. Summary judgment is therefore not appropriate because the court finds Peterson’s
 9 assertions are subject to plausible factual inferences. *Sicor Ltd.*, 51 F.3d at 857.

10 The court in *Setty* resolved a similar dispute concerning whether a policy had been canceled
 11 or renewed by examining the dates set forth in the payment schedule. *Setty v. United Fin. Cas.*
 12 *Co., Inc.*, 2023 WL 5184147 (N.D. Cal. Aug. 11, 2023). There, payment was due on the 27th of
 13 each month under the UFCC policy. *Id.* It is unclear why there was not a similar payment schedule
 14 set forth here, and the dispute created by such ambiguity cannot be resolved on summary judgment.

15 Based on the conflicting evidence and parties’ contentions, there remains a genuine issue
 16 of material fact as to whether the contract was valid at the time of the collision. The court therefore
 17 denies summary judgment as to Peterson’s breach of contract claim.

18 B. Fraudulent Misrepresentation

19 Peterson concedes in his response that there is no factual basis to support his second claim
 20 for fraudulent and intentional misrepresentation. (ECF No. 45). The court will construe Peterson’s
 21 concession on summary judgment as a voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(2);
 22 *see Williams v. Sparks*, 2023 WL 2634377 (D. Nev. 2023) (voluntarily dismissing plaintiff’s claim
 23 that was factually unsupported on summary judgment). Peterson’s claim for fraudulent and
 24 intentional misrepresentation is therefore dismissed.

25 C. Breaches of Implied Covenant of Good Faith and Fair Dealing

26 The court considers the two claims for contractual and tortious breaches of the implied
 27 covenant of good faith and fair dealing together.

28 . . .

1 Insurance contracts have an implied covenant of good faith and fair dealing between both
 2 parties. *Pemberton v. Farmers Ins. Exchange*, 109 Nev. 789 (Nev. 1993). An insurer fails to act
 3 in good faith when it refuses “without proper cause” to compensate the insured for a loss covered
 4 by the policy. *Id.* at 793. A violation of the covenant gives rise to a bad faith tort claim when a
 5 special relationship exists between the parties, such as insured and insurer. *Allstate Ins. Co. v.*
 6 *Miller*, 125 Nev. 300, 308 (Nev. 2009).

7 To prevail on a bad faith claim, the plaintiff must show the insurer unreasonably denied or
 8 delayed payment of a valid claim and did so with knowledge that no reasonable basis for denial
 9 existed. *Guaranty Nat. Ins. Co. v. Potter*, 112 Nev. 199 (Nev. 1996). Thus, Peterson must prove
 10 UFCC canceled Zazueta’s policy with the knowledge that it had no reasonable basis to do so.

11 The parties dispute the policy terms. From UFCC’s perspective, it properly canceled the
 12 policy in compliance with Nevada’s statutory requirements and the terms of the policy. From
 13 Peterson’s perspective, UFCC wrongfully canceled the policy prematurely.

14 The omission of a clear payment schedule created a reasonable ambiguity for both parties.
 15 UFCC offers evidence showing two bills it sent to Zazueta requesting payment prior to canceling
 16 the policy. This is demonstrative of UFCC’s basis for canceling the policy, as the failure to make
 17 timely payments owed under a contract constitutes a material breach. *NAC Found., LLC v. Jodoin*,
 18 2017 WL 1246338, at *3 (D. Nev. Mar. 31, 2017). This is consistent with other courts finding an
 19 insurer’s reliance on a potentially effective cancellation does not in itself illustrate bad faith. *Inks*
 20 *v. USAA Gen. Indem. Co.*, 2018 WL 3589116 (N.D. Okla. June 27, 2018).

21 Even construing UFCC’s allegations favorably to Peterson, he fails to meet the standard
 22 necessary to succeed on a bad faith insurance claim in contract or tort. The court finds UFCC had
 23 a reasonable basis for attempting to cancel the policy, believing Zazueta defaulted on payments.
 24 The court makes this finding without reaching the merits of whether the cancellation was indeed
 25 proper.

26 D. Nevada Unfair Claims Practices Act; NRS 686A.310, NAC 686A et seq.

27 Peterson’s final claim alleges UFCC failed to comply with the requirements of NRS §§
 28 687B.320 and 687B.360, which mandates cancellation procedures for insurance contracts. NRS

1 § 686A.310(1)(m) provides that an insurer who fails to comply with the provisions of NRS §§
 2 687B.310 to 687B.390, inclusive, has committed an unfair claim practice.

3 NRS § 687B.320(1)(a) allows an insurer to cancel a policy if the policyholder fails to pay.
 4 The cancellation notice must be “accompanied by a written explanation of the specific reasons for
 5 the cancellation.” NRS § 687B.310(6). The explanation must state “with reasonable precision the
 6 facts on which the insurer’s decision is based.” NRS § 687B.360.

7 Peterson contends UFCC’s notice did not state the reason for cancellation with precision.
 8 UFCC argues the notice stated the reason for the cancellation was nonpayment, thereby complying
 9 with Nevada’s statutory requirements. The court agrees with UFCC.

10 The notice sent to Zazueta stated, “Unfortunately, we didn’t receive your payment and, as
 11 a result, your policy will be canceled...”. ECF No. 40, Exhibit F. The court finds the written
 12 cancellation notice unambiguously set forth the reason for cancellation as nonpayment. Peterson’s
 13 contention that UFCC was required to provide a more precise explanation than the one given is
 14 not supported by law. *Kolob Heating & Cooling v. Ins. Corp. of New York*, 154 F. App’x 569 (9th
 15 Cir. 2005) (affirming that nonpayment as a reason for cancellation is reasonably precise).

16 Peterson also alleges UFCC failed to inform Zazueta of her right to request additional
 17 information concerning the cancellation. Nevada law requires insurers to provide specific
 18 information about cancellation upon request. NRS § 687B.360. The court finds Peterson’s
 19 allegation directly controverted by the plain language of the cancellation notice. The notice
 20 unambiguously states Zazueta “may make a written request for additional information about this
 21 cancellation.” ECF No. 40, Exhibit F at 3.

22 The notice complied with the statutory requirements provided in NRS § 687B such that
 23 Peterson cannot establish a claim under the Nevada Unfair Claim Practices Act. The court
 24 therefore grants summary judgment to UFCC on Peterson’s remaining claim.

25 **IV. Conclusion**

26 Accordingly,

27 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant UFCC’s motion
 28 for summary judgment (ECF No. 40) be, and the same hereby is, DENIED as to plaintiff’s claims

1 for (1) breach of contract and GRANTED as to the plaintiff's claims for (3) breach of the
2 contractual covenant of good faith and fair dealing, (4) breach of the tortious covenant of good
3 faith and fair dealing, and (5) violation of the Nevada Unfair Claims Practices Act.

4 IT IS FURTHER ORDERED that plaintiff's claim for fraudulent and intentional
5 misrepresentation is DISMISSED without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

6 DATED September 23, 2024.

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8 UNITED STATES DISTRICT JUDGE
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